

§ 19.204 Dealer records.

Every dealer is required to maintain records of transactions. Distilled spirits transactions that appear in the records required by subpart V of this part will meet the proprietor's record-keeping requirements as a dealer. For other transactions not covered in the distilled spirits plant records, such as retail sales of wine or beer in a restaurant at the distilled spirits plant, or operations as a wholesale dealer in wine or beer, the proprietor must keep the records specified for dealers in part 31 of this chapter.

(26 U.S.C. 5121, 5122, 5124)

Subpart I—Distilled Spirits Taxes**§ 19.221 Scope.**

This subpart covers the taxation of distilled spirits and the procedures for payment of taxes by proprietors of distilled spirits plants. Issues covered in this subpart include tax rates, liability for tax, tax determination, return periods, filing of tax returns, forms of payment, electronic fund transfers, and credits under 26 U.S.C. 5010.

(26 U.S.C. 5001)

BASIC PROVISIONS OF TAX LAW
AFFECTING SPIRITS

§ 19.222 Basic tax law provisions.

(a) *Distilled spirits tax.* 26 U.S.C. 5001 and 7652 impose a tax on all distilled spirits produced in, or imported into or brought into, the United States at the rate prescribed in section 5001 on each proof gallon and a proportionate tax at a like rate on all fractional parts of a proof gallon. For the current rate of tax see 26 U.S.C. 5001.

(b) *Products containing distilled spirits.* All products of distillation, by whatever name known, which contain distilled spirits, on which the tax imposed by law has not been paid, and any alcoholic ingredient added to such products, are considered and taxed as distilled spirits.

(c) *Wines with high alcohol content.* Wines containing more than 24 percent of alcohol by volume are taxed as distilled spirits.

(d) *Attachment of the tax.* Under 26 U.S.C. 5001(b), the tax attaches to dis-

tilled spirits as soon as the substance comes into existence as such, whether it be subsequently separated as pure or impure spirits, or be immediately, or at any subsequent time, transferred into any other substance, either in the process of original production, or by any subsequent process.

(e) *Alcohol tax is a lien on spirits.* Under 26 U.S.C. 5004, the tax becomes a first lien on the distilled spirits from the time the spirits come into existence as such. The conditions under which the first lien terminates are described in 26 U.S.C. 5004.

(f) *Tax credit for eligible wines and eligible flavors.* Under 26 U.S.C. 5010, a credit against the tax imposed on distilled spirits by 26 U.S.C. 5001 or 7652 on each proof gallon of alcohol derived from eligible wine, or from eligible flavors which do not exceed 2.5 percent of the finished product on a proof gallon basis is allowed at the time the tax is payable as if it constituted a reduction in the rate of tax.

(g) *Effective tax rates.* Where credit against the tax is desired, the proprietor liable for the tax must establish an effective tax rate in accordance with § 19.246. The effective tax rate established will be applied to each withdrawal or other taxable disposition of the distilled spirits.

(26 U.S.C. 5001, 5004, 5010, 7652)

§ 19.223 Persons liable for tax.

(a) *Distilling.* Under 26 U.S.C. 5005, the distiller of spirits is liable for the tax and each proprietor or possessor of, and person in any manner interested in the use of, any still, distilling apparatus, or distillery, shall be jointly and severally liable for the tax on distilled spirits produced. However, a person, not an officer or director of a corporate proprietor, owning or having the right of control of not more than 10 percent of any class of stock of that proprietor, is not liable by reason of the stock ownership or control. Persons transferring spirits in bond are relieved of tax liability if:

(1) The proprietors of transferring and receiving distilled spirits plant premises are independent of each other and neither has a proprietary interest, directly or indirectly, in the business of the other, and

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(2) No person liable for the tax on transferred spirits retains any interest in the spirits.

(b) *Storage on bonded premises.* Under 26 U.S.C. 5005(c) each person operating bonded premises will be liable for the tax on all spirits while the spirits are stored on the premises, and on all spirits that are in transit to the premises from the time of removal from the transferor's bonded premises, pursuant to an approved application. Liability for the tax continues until the spirits are transferred or withdrawn from bonded premises as authorized by law, or until the liability for tax is relieved under the provisions of 26 U.S.C. 5008(a). Claims for relief from liability for spirits lost are covered in subpart J of this part. Voluntary destruction of spirits in bond is covered in subpart Q of this part.

(c) *Withdrawals without payment of tax.* Under 26 U.S.C. 5005(e), any person who withdraws spirits from the bonded premises of a plant without payment of tax, as provided in 26 U.S.C. 5214, will be liable for the tax on the spirits from the time of withdrawal. The person will be relieved of any liability at the time the spirits are exported, deposited in a foreign trade zone, used in production of wine, deposited in a customs bonded warehouse, laden as supplies upon or used in the maintenance or repair of certain vessels or aircraft, or used for certain research, development or testing, as provided by law.

(d) *Withdrawals free of tax.* Persons liable for tax under paragraph (a) of this section, are relieved of the liability on spirits withdrawn from bonded premises free of tax under this part, at the time the spirits are withdrawn.

(e) *Withdrawn from customs custody without payment of tax.* Under 26 U.S.C. 5232(a) when imported distilled spirits in bulk containers are withdrawn from customs custody and transferred to the bonded premises of a distilled spirits plant without payment of the tax imposed on imported distilled spirits by 26 U.S.C. 5001, the person operating the bonded premises of the distilled spirits plant to which spirits are transferred will become liable for the tax on the spirits upon their release from customs

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custody, and the importer will thereupon be relieved of liability for the tax.

(26 U.S.C. 5005, 5066, 5232)

REQUIREMENTS FOR GAUGING AND TAX DETERMINATION

§ 19.225 Requirement to gauge and tax determine spirits.

Before withdrawing distilled spirits from bond, the proprietor must gauge the spirits and determine the tax that is due on the spirits. This requirement applies to all spirits on which the tax will be either prepaid or deferred.

(26 U.S.C. 5006, 5204, 5213)

§ 19.226 Gauges for tax determination.

There are several acceptable methods that a proprietor may use when gauging spirits for tax determination.

(a) *Cases.* If spirits are withdrawn from the bonded premises in cases, the proprietor must gauge the spirits based on the contents of the cases. The proprietor will determine the number of proof gallons of spirits in cases as provided in part 30 of this chapter. The proprietor must convert metric units of measure to U.S. units according to § 19.579.

(b) *Packages.* If spirits are withdrawn from the bonded premises in packages on the basis of an individual package gauge, each package must be gauged unless the tax is to be determined on the production or filling gauge. When gauging the packages, the proprietor must prepare a package gauge record as specified in § 19.619 and attach it to the record of tax determination that is required by § 19.611.

(c) *Tanks.* The proprietor must use weight, or an accurate mass flow meter and proof as prescribed in §§ 19.284 and 19.285, to gauge bulk spirits in tanks that are to be withdrawn on determination of tax. The proprietor must record the elements of the gauge on the record of tax determination. As an alternative, the proprietor may record gauge elements on a separate gauge record, and attach the gauge record to the record of tax determination.

(26 U.S.C. 5204, 5213)